

Regular Session, 2010

HOUSE BILL NO. 277

BY REPRESENTATIVE SAM JONES

VETOED
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Veto Message

AN ACT

To enact Chapter 10-E of Title 33 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 33:4550.1 through 4550.12, relative to St. Mary Parish; to create and provide for the St. Mary Hydroelectric Authority as a political subdivision within such parish; to provide for the boundaries, governance, and powers and duties of the district; to provide for district funding, including the issuance of bonds and the use of district funds; and to provide for related matters.

Notice of intention to introduce this Act has been published
as provided by Article III, Section 13 of the Constitution of
Louisiana.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 10-E of Title 33 of the Louisiana Revised Statutes of 1950, comprised of R.S. 33:4550.1 through 4550.12, is hereby enacted to read as follows:

CHAPTER 10-E. ST. MARY HYDROELECTRIC AUTHORITY

§4550.1. Creation

All the territory in the parish of St. Mary lying within the watershed of the Wax Lake Outlet and the Atchafalaya River and their tributaries, shall be embraced in the limits of and shall constitute a district to be known as the St. Mary Hydroelectric Authority, referred to in this Section as the "district".

§4550.2. Board of commissioners

A. The governing authority of the district shall be vested in a board of commissioners, referred to in this Chapter as the "board", composed as follows:

(1) The state representative who represents House District No. 50, or his designee.

1 (2) The state representative who represents House District No. 51, or his
2 designee.

3 (3) The state senator who represents Senate District No. 21, or his designee.

4 (4) The president of St. Mary Parish shall appoint two members subject to
5 the approval of the parish governing authority.

6 (5) The mayor of the town of Baldwin shall appoint one member subject to
7 the approval of the municipal governing authority.

8 (6) The mayor of the town of Berwick shall appoint one member subject to
9 the approval of the municipal governing authority.

10 (7) The mayor of the city of Franklin shall appoint one member subject to
11 the approval of the municipal governing authority.

12 (8) The mayor of the city of Morgan City shall appoint one member subject
13 to the approval of the municipal governing authority.

14 (9) The mayor of the city of Patterson shall appoint one member subject to
15 the approval of the municipal governing authority.

16 (10) The chief of the sovereign nation of the Chitimacha Tribe of Louisiana
17 shall appoint one member subject to the approval of the tribal council, or one
18 member shall be appointed pursuant to any method determined by the tribal council.

19 B.(1) The members serving pursuant to Paragraphs (A)(4) through (10) of
20 this Section shall serve four-year terms after serving initial terms as follows: two
21 members shall serve an initial term of one year; two shall serve two years; two shall
22 serve three years; and two shall serve four years as determined by lot at the first
23 meeting of the board.

24 (2) Each member serving pursuant to Paragraphs (A)(1) through (3) of this
25 Section shall serve during his term of office. Each designee shall serve at the
26 pleasure of the designating authority.

27 C. Six members of the board shall constitute a quorum for the transaction of
28 business.

1 D. Any vacancy which occurs prior to the expiration of the term for which
2 a member of the board has been appointed shall be filled for the remainder of the
3 unexpired term in the same manner as the original appointment.

4 E. The board shall fix a time and place for the holding of its regular meetings
5 and shall hold at least one regular meeting in each calendar month. Special meetings
6 may be held upon call of the chairman or four members of the board at such time and
7 place as may be designated, after written notification to the full membership. The
8 board shall hold no more than two special meetings during one calendar year.

9 F. Each member of the board shall serve without compensation but shall be
10 entitled to be reimbursed for expenses actually incurred in attending meetings of the
11 board or its committees, or in the transaction of any business of the authority, when
12 such business has been authorized by the board.

13 G. The board shall elect from its members a chairman, a vice chairman, and
14 such other officers as it may deem necessary. The board shall also select a secretary
15 and a treasurer, or a secretary-treasurer who need not be members of the board. The
16 duties of the officers shall be fixed by the bylaws adopted by the board; however, it
17 shall be the duty of the secretary to preserve a record of all business transacted by
18 the board and to perform such other duties as the board may designate. The board
19 may fix the compensation of any secretary or treasurer who is not a member of the
20 board.

21 H. The board shall adopt such bylaws and rules and regulations for the
22 orderly transaction of its business and affairs as it may deem fit. It may appoint and
23 retain all employees it may consider desirable, including engineers and attorneys
24 specifically including but not limited to a special counsel who shall be charged with
25 negotiating and renegotiating contracts dealing with fees paid to the district for
26 goods or services and any other duties the board may assign. The board may appoint
27 a general manager, experienced in the field of electrical generation, management, or
28 sales as well as personnel, budgetary, and other administrative fields and may
29 provide that all or certain classes of employees shall be employed and discharged by
30 the general manager.

1 §4550.3. Status; suits; process; exemption from taxation

2 A. The district is hereby declared to be a political subdivision of the state of
3 Louisiana as defined in the Constitution of Louisiana and an agency and
4 instrumentality of the state of Louisiana required by the public convenience and
5 necessity for the carrying out of the functions of the state, and to be a corporation
6 and body politic and corporate, with power of perpetual succession, invested with
7 all powers, privileges, rights, and immunities conferred by law upon other
8 corporations of like character, including but not limited to port authorities, port
9 commissions, and port, harbor, and terminal districts within the state.

10 B. The district shall not have the power to levy taxes, but it may assess and
11 collect charges, fees, and rentals for the use of its properties and facilities and for the
12 construction, installation, maintenance, and operation of any property or facility
13 owned by it or in which it has an interest only for the purpose of and directly related
14 to generating or transmitting hydroelectric power. The district shall have and
15 possess the authority to sue and be sued. All legal process shall be served upon the
16 chairman of the board.

17 C. The domicile of the district shall be within St. Mary Parish.

18 D. The district, in carrying out the purposes of this Chapter, shall be
19 performing an essential public function of the state of Louisiana and shall not be
20 required to pay any tax or assessment on its properties or any part thereof, nor to pay
21 any excise, license, or other tax or imposition on its operating revenues, and the
22 bonds issued pursuant to this Chapter and their transfer and the income therefrom
23 shall at all times be exempt from taxation within the state.

24 E. The district is deemed not to be an instrumentality of the state for
25 purposes of Article X, Section 1(A) of the Constitution of Louisiana.

26 §4550.4. Powers

27 A. The district's power, authority, and jurisdiction shall be limited to the
28 geographical boundaries of the parish of St. Mary, and all actions of the district shall
29 be solely for the purpose of generating or transmitting hydroelectric power. The
30 district shall have the power:

1 (1) To have a corporate seal.

2 (2) To acquire by purchase, gift, devise, lease, expropriation, or other mode
3 of acquisition, to hold, pledge, encumber, lease, and dispose of immovable and
4 movable property of every kind within its territorial jurisdiction, whether or not
5 subject to mortgage or any other lien.

6 (3) To make and enter into contracts, conveyances, mortgages, deeds or
7 trusts, bonds, and leases in the carrying out of its corporate objectives, including but
8 not limited to contracts for the legal services of a special counsel.

9 (4) To let contracts for the construction or acquisition in any other manner
10 of property and facilities incident to the carrying out of the corporate purposes of the
11 district, which contracts shall be let as otherwise provided by law.

12 (5) To incur debts and borrow money, but no debt so incurred shall be
13 payable from any source other than the revenues to be derived by the district from
14 sources other than taxation.

15 (6) To fix, maintain, collect, and revise rates, charges, and rentals for the
16 facilities of the district and the services rendered thereby, including but not limited
17 to all charges for services and goods provided by or through the Wax Lake Outlet
18 and the Atchafalaya River.

19 (7) To pledge all or any part of its revenues.

20 (8) To enter into agreements of any nature with any person, corporation,
21 association, or other entity, including public corporations, political subdivisions,
22 municipalities, and federal and state agencies and instrumentalities of every kind, for
23 the operation of all or any part of the properties and facilities of the district.

24 (9) To control in order to utilize and distribute the waters of the rivers and
25 streams of the Wax Lake Outlet and the Atchafalaya River watershed, including but
26 not limited to all waters flowing through the Wax Lake Outlet and the Atchafalaya
27 River; and in addition to all of the aforementioned powers for the beneficial
28 utilization of water resources, to control and employ such waters of the Wax Lake
29 Outlet and the Atchafalaya River and its tributaries in the state of Louisiana,
30 including the storm and flood waters thereof, as set forth in this Paragraph:

1 (a) To provide through practical and legal means for the use and
2 coordination of the regulation of the waters of the Wax Lake Outlet and the
3 Atchafalaya River and its tributaries.

4 (b) To provide by adequate organization and administration for the
5 preservation of the equitable rights of the people of the different sections of the
6 watershed area in the beneficial use of the waters of the Wax Lake Outlet and the
7 Atchafalaya River and its tributaries.

8 (c) For the equitable distribution of such waters to the regional potential
9 requirements for all uses including hydroelectric, domestic, municipal, maritime,
10 port, and manufacturing, provided that no generating capacity, structures, or facilities
11 other than hydroelectric shall be installed by the district. The district shall have no
12 power to construct, own, or lease any electric transmission or distribution lines;
13 however, the district may construct, own, or lease transmission lines in order to make
14 electrical power generated by the district available for purchase through a connection
15 to transmission lines of an electrical system purchasing electric power from the
16 district.

17 (10) To utilize the waters of the Wax Lake Outlet and the Atchafalaya River
18 for the generation of electric power, to sell the use of the water of such waterways
19 for the production of electric power, to provide or furnish power and to that end to
20 construct, maintain, operate, or lease any or all hydroelectric generating facilities
21 within its territorial jurisdiction useful for such purpose.

22 (11) To purchase or construct all works and facilities necessary or
23 convenient to the exercise of the powers provided in this Section and to accomplish
24 the purposes specified in this Chapter, and to purchase or otherwise acquire, within
25 its territorial jurisdiction all immovable and movable property necessary or
26 convenient for carrying out such purposes.

27 (12) To enter into any and all contracts and other agreements with any
28 person, any public or private entity, any government or governmental agency,
29 including the United States of America, the state of Louisiana, and the agencies,

1 departments, and political subdivisions thereof, which contracts and other
2 agreements may provide for the sale and utilization of the hydroelectricity generated.

3 B. Title to all property acquired by the district shall be taken in its corporate
4 name and shall be held by it as an instrumentality of the state of Louisiana. The
5 district shall have and be recognized to exercise such authority and power of control
6 and regulation over the waters of the Wax Lake Outlet and the Atchafalaya River and
7 its tributaries as may be exercised by the state of Louisiana, subject to the provisions
8 of the Constitution of Louisiana.

9 C. Nothing in this Chapter is intended to restrict the use of water from the
10 Wax Lake Outlet or the Atchafalaya River or outside of St. Mary Parish for any
11 reason other than hydroelectric power generation; however, during any time period
12 that the district restricts the use of water within the parish for electric generation or
13 is prevented from generating electricity, the utility shall not pay the district for power
14 that it was prevented from generating.

15 §4550.5. Cooperation with federal and state agencies

16 The board may cooperate with the government of the United States and may
17 contribute financially to the expense of such improvement projects as are or may be
18 authorized or adopted by the United States; it may also cooperate with all agencies,
19 departments, and subdivisions of the state of Louisiana in all undertakings, the
20 purpose of which shall be the furtherance of the objects and purposes for which the
21 district is created, and the authority to cooperate with any such agency of the state
22 or federal government shall include the authority to contract with any such agency
23 and to accept any grant or gratuity made for any of the purposes of this Chapter.

24 §4550.6. Authority of state agencies to cooperate; construction of facilities

25 A. There is hereby expressly conferred upon the state of Louisiana, its
26 departments, and agencies and upon the political subdivisions of the state, the
27 authority to cooperate with the board to make contributions or grants to the district
28 for any of the purposes of this Chapter and to enter into contracts and agreements
29 with the district in furtherance of any of the purposes of this Chapter.

1 B. The district may locate, construct, operate, and maintain any of its works
2 or facilities over, under, through, in, or along any of the lands which are the property
3 of the state or of any subdivision, institution, agency, or instrumentality thereof,
4 within its territorial jurisdiction provided that a cooperative endeavor is agreed to
5 and executed between the district and the appropriate state entity.

6 C.(1) The district and its authorized agents and employees may have the
7 privilege of entering upon any lands, waters, and premises in the state for the purpose
8 of making surveys, soundings, drillings, examinations, and appraisals as it may deem
9 necessary or convenient for the purpose of this Chapter.

10 (2) The district shall make reimbursement for any actual damages resulting
11 to such lands, waters, or premises as a result of such activities.

12 §4550.7. Bonds

13 A.(1) For the purpose of providing funds for the acquisition, by purchase,
14 construction or otherwise, of any property or facilities which the district is authorized
15 to acquire pursuant to this Chapter, including the acquisition of water rights, and for
16 extending and improving any such property and facilities, the district may incur debt
17 and issue revenue bonds to be secured by the fees, assessments, or any revenues
18 collected by the district for the purposes of the district. There may be included in the
19 amount of any such bond issue reasonable allowance for legal, engineering, and
20 fiscal services, interest during construction and for one year after the estimated date
21 of completion of construction, and other expenses in connection with the
22 authorization and issuance of the bonds and the acquisition or construction of the
23 improvements.

24 (2) Revenue bonds of the district shall be issued in the manner as provided
25 in Part XII or Part XIII of Chapter 4 of Subtitle II of Title 39 of the Louisiana
26 Revised Statutes of 1950 or any other applicable law. Revenue bonds issued under
27 this Section shall be authorized by resolution of the district and shall be limited
28 obligations of the district, the principal of and interest on which shall be payable
29 solely from the revenues as provided in Paragraph (1) of this Subsection or from
30 income and revenue derived from the sale, lease, or other disposition of the project

1 or facility to be financed by the bonds, from the income and revenue derived from
2 the sale, lease, or other disposition of any existing project or facility acquired,
3 constructed, and improved under the provisions of this Section, or from any other
4 income or revenue derived from any project or facility so financed or any such
5 existing project or facility; however, in the discretion of the district, the bonds may
6 be additionally secured by mortgage or other security device covering all or part of
7 the project from which the revenues so pledged may be derived. Any refunding
8 bonds issued pursuant to this Subsection shall be payable from any source described
9 above or from the investment of any of the proceeds of the refunding bonds
10 authorized under this Section and shall not constitute an indebtedness or pledge of
11 the general credit of the district within the meaning of any constitutional or statutory
12 limitation of indebtedness and shall contain a recital to that effect. Bonds of the
13 district shall be issued in such form, shall be in such denominations, shall bear
14 interest, shall mature in such manner, and shall be executed as provided in the
15 resolution authorizing the issuance thereof. The bonds may be subject to redemption
16 at the option of and in the manner determined by the board in the resolution
17 authorizing the issuance thereof.

18 (3) The district may in its own name and behalf borrow from time to time in
19 the form of certificates of indebtedness. The certificates shall be secured by the
20 dedication and pledge of monies of the district derived from any lawful sources,
21 including those revenues as provided in Paragraph (1) of this Subsection and any
22 other sources of income or revenue of the district, or any combination of such
23 sources, provided that the term of such certificates shall not exceed ten years, and the
24 annual debt service on the amount borrowed shall not exceed the anticipated
25 revenues to be dedicated and pledged to the payment of the certificates of
26 indebtedness, as shall be estimated by the board of the district at the time of the
27 adoption of the resolution authorizing the issuance of such certificates. The estimate
28 of the board referred to in the authorizing resolution shall be conclusive for all
29 purposes of this Section.

1 (4) Bonds, certificates, or other evidences of indebtedness issued by the
2 district pursuant to this Section are deemed to be securities of public entities within
3 the meaning of Chapters 13 and 13-A of Title 39 of the Louisiana Revised Statutes
4 of 1950, and shall be subject to defeasance in accordance with the provisions of
5 Chapter 14 of Title 39 of the Louisiana Revised Statutes of 1950, and may be
6 refunded in accordance with the provisions of Chapters 14-A and 15 of Title 39 of
7 the Louisiana Revised Statutes of 1950, and may also be issued as short-term
8 revenue notes of a public entity under Chapter 15-A of Title 39 of the Louisiana
9 Revised Statutes of 1950.

10 (5) The issuance and sale of bonds, certificates of indebtedness, notes, or
11 other evidence of debt by the district shall be subject to approval by the State Bond
12 Commission.

13 (6) Any resolution authorizing the issuance of bonds pursuant to this Chapter
14 may contain covenants, including but not limited to:

15 (a) The purpose or purposes to which the proceeds of the sale of the bonds
16 may be applied and the deposit, use, and disposition thereof.

17 (b) The use, deposit, securing of deposits, and disposition of the revenues of
18 the district, including the creation and maintenance of reserves.

19 (c) The issuance of additional obligations payable from the revenues of the
20 district.

21 (d) The operation and maintenance of the properties of the district.

22 (e) The insurance to be carried thereon and the use, deposit, and disposition
23 of insurance monies.

24 (f) The books of account and records and the inspection and audit thereof
25 and the accounting methods of the district.

26 (g) The nonrendering of any free service by the district.

27 (h) The preservation of the properties of the district free from any mortgage,
28 sale, lease, or other encumbrance not specifically permitted by the terms of the
29 resolution.

1 (i) The appointment and the powers and duties of any trustee who may be
2 named in such resolution for the purpose of carrying out functions designed to
3 safeguard the security of such bonds.

4 (7) While any bonds are outstanding under this Section, it shall be the duty
5 of the board to fix and from time to time to revise the rates of compensation for all
6 commodities and services sold or rendered by the district which will be fully
7 adequate to pay the expenses of operating and maintaining the district and its
8 properties, to pay principal of and interest on its obligations promptly as principal
9 and interest fall due, and to carry out all of the provisions and covenants of the
10 resolution or resolutions authorizing such bonds. Nothing contained in this Section
11 shall be so construed as to prevent the execution of leases or agreements by the
12 district providing for the lease of properties of the district or the sale of commodities
13 and services sold or rendered by the district at fixed rentals or prices for a term of
14 years, provided that the rentals or prices so named are at the time of the execution
15 of any such lease or agreement, together with the other reasonably anticipated
16 revenues of the district, sufficient to assure the ability of the district to carry out the
17 requirements of this Chapter and the requirements of the resolution or resolutions
18 authorizing its bonds.

19 (8) Such bonds, certificates of indebtedness, notes, or other evidence of debt
20 shall have all the qualities of negotiable instruments under the commercial laws of
21 the state of Louisiana.

22 §4550.8. Contesting validity of bonds; contracts

23 Bonds and any other evidences of indebtedness of the district shall be issued,
24 sold, and delivered in accordance with the terms and provisions of a resolution
25 adopted by the board. For a period of thirty days from the date of publication of any
26 resolution or ordinance authorizing the issuance of any bonds, certificates of
27 indebtedness, notes, or other evidence of debt of the district, any interested person
28 may contest the legality of such resolution or ordinance and the validity of such
29 bonds, certificates of indebtedness, notes, or other evidence of debt issued or
30 proposed to be issued thereunder and the security of their payment, after which time

1 no one shall have any cause of action to contest the legality of said resolution or
2 ordinance or to draw in question the legality of said bonds, certificates of
3 indebtedness, notes, or other evidence of debt, the security therefor, or the debts
4 represented thereby for any cause whatever, and it shall be conclusively presumed
5 that every legal requirement has been complied with, and no court shall have
6 authority to inquire into such matters after the lapse of thirty days.

7 §4550.9. Acquisition of lands, servitudes, and rights-of-way

8 A. There is expressly conferred upon the district, the right to acquire lands,
9 servitudes, and rights-of-way in St. Mary Parish solely for the purpose of generating
10 or transmitting hydroelectric power by purchase, exchange, expropriation, or
11 otherwise.

12 B. Should the district acquire the ownership of any timber it may sell the
13 same in the following manner:

14 (1) The district shall offer the timber for sale at public auction after having
15 first given public notice of such sale in the manner provided by law.

16 (2) If no satisfactory bid is received, the district may sell the timber at
17 private sale to any purchaser for any amount greater than the amount offered by the
18 highest bidder at the public auction.

19 §4550.10. Budget; administrative costs; revenues

20 A. The district shall develop and adopt an initial five-year projected
21 administrative budget. The district shall thereafter develop and adopt an annual
22 budget for administrative costs based upon a baseline established by the projected
23 budget.

24 B.(1) Beginning the first year in which the district develops and adopts an
25 annual budget for administrative costs, at least ninety percent of all revenues earned
26 by the district shall be used to provide hurricane protection for electrical
27 transmission and distribution in St. Mary Parish. The goal of any such protection
28 shall be to increase the resiliency of electrical transmission and distribution systems.

29 (2) The district may enter into a cooperative endeavor agreement for such
30 purpose with any electrical system providing services in St. Mary Parish regardless

1 of whether any such system is privately owned, publicly owned, or part of a
2 cooperative.

3 (3) Beginning the first year in which the district develops and adopts an
4 annual budget for administrative costs and each year thereafter, no more than ten
5 percent of the revenues earned by the district shall be used for administrative costs.

6 §4550.11. Conflicts; approval of projects

7 All actions or activities taken pursuant to this Chapter shall be taken or
8 implemented only to the extent such actions or activities are not in conflict with and
9 are consistent with the Atchafalaya Basin Master Plan or Annual Basin Plan and the
10 Coastal Protection and Restoration Authority's Master Plan for coastal protection and
11 restoration for a sustainable coast. Furthermore, any project authorized by the
12 district which may impact water flow or water levels within the Atchafalaya Basin,
13 as defined by R.S. 30:2000.2, or through Wax Lake Outlet or the Atchafalaya River
14 shall be approved in advance by the Atchafalaya Basin Research and Promotion
15 Board and the Coastal Protection and Restoration Authority.

16 §4550.12. Chapter as complete authority; audits and reports; construction of
17 Chapter

18 A. This Chapter shall be full, complete, and independent authority for the
19 performance of all acts authorized by this Chapter, and no other statute or legislative
20 act shall be construed to be applicable to the carrying out of the powers granted by
21 this Chapter unless expressly made applicable.

22 B.(1) A complete book of accounts shall be kept by the district. Within one
23 hundred eighty days after the close of each fiscal year, the account books and records
24 of the district and of the depository of the district shall be audited by the legislative
25 auditor, or a certified public accountant, in such manner as to enable him to report
26 to the legislature as to the manner and purpose of the expenditure of all funds of the
27 district, and a report thereon shall be submitted at the first regular meeting of the
28 board held following the audit.

1 (2) Two copies of the report shall be filed in the office of the district; one
2 copy of the report shall be filed with the legislative auditor. All copies shall be open
3 to public inspection.

4 C. This Chapter is intended to carry out a function of the state to protect the
5 health and welfare of the inhabitants of the portion of the state to be affected by this
6 Chapter and shall be liberally construed by the courts to effect its purposes.

7 Section 2. This Act shall become effective upon signature by the governor or, if not
8 signed by the governor, upon expiration of the time for bills to become law without signature
9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
11 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

House Bill No. 277 seeks to give the newly created St. Mary Hydro-Electric District sole authority over the use of certain river and water resources and the use of all funding derived from these resources. The larger goal of this bill – to promote hydro-electric power - is a laudable goal, but fundamental problems with this legislation remain.

This bill directly conflicts with another expression of the Legislature this session as to how the state should regulate hydroelectric power. Specifically, Senate Bill No. 183 by Sen. N. Gautreaux calls for the state to manage all future hydroelectric projects as well as the revenues generated by these projects. I am concerned with setting up a regulatory structure that would result in 63 parishes operating under one structure that is managed by the state and one parish operating under a completely different structure. Additionally, the Attorney General recently issued an opinion after this bill was introduced indicating that water is a natural resource of the state, requiring it to be managed by the state in a similar fashion to our other resources like fisheries, oil, and gas.

For these reasons, I have vetoed House Bill No. 277 and hereby return it to the House of Representatives.